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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,488	11/14/2005	Toshimichi Morikoshi	4439-4033	6831
85775                      7590                      08/21/2009 Locke Lord Bissell & Liddell LLP Attn: IP Docketing Three World Financial Center New York, NY 10281-2101				
EXAMINER				
WARE, DEBORAH K				
ART UNIT		PAPER NUMBER		
1651				
NOTIFICATION DATE		DELIVERY MODE		
08/21/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptopatentcommunication@lockelord.com

### Office Action Summary

**Application No.**

10/536,488

**Applicant(s)**

MORIKOSHI ET AL.

**Examiner**

DEBBIE K. WARE

**Art Unit**

1651

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-12 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 12, 15, 16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/003)
- Paper No(s)/Mail Date 2/18/09
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 10-12 and 15-19 are pending.

#### ***Response to Amendment***

The amendment filed May 7, 2009, has been received and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on February 18, 2009, was filed and entered of record. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

#### ***Election/Restrictions***

Applicant's election of Group I in the reply filed on November 20, 2008, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 11 and 17 are, therefore, withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 20, 2008.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 10, 12, 15, 16, 18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by newly cited Yokomizo (US 6896918).

Claims are drawn to methods of using a B-1,4-mannobiose-containing composition comprising blending the composition with a feed and feeding the feed to livestock or poultry to inhibit Salmonella.

Yokomizo teaches methods of using a mannobiose containing composition comprising blending the composition with a feed and feeding the feed to livestock or poultry to inhibit Salmonella. Note the abstract and col. 3, lines 45-48 and line 53 and col. 4, see Table 1.

The claims clearly read on the teachings of Yokomizo wherein the same preparation steps are used on the same identical source material, thus, the B-1,4-mannobiose containing composition is inherent to the disclosure of Yokomizo. Also the ranges of at least 10% by weight and at least 1% by weight, etc. are also clearly disclosed because the ranges of the cited disclosure clearly overlap with the claimed amounts. The identical method steps are used by Yokomizo to carry out the methods and hence the claims are identical to the cited disclosure and are considered to be anticipated by Yokomizo.

#### ***Response to Arguments***

Applicant's arguments filed May 7, 2009, have been fully considered but they are not persuasive. The argument that Yokomizo teaches a method for preparing a mannose-containing composition and does not, therefore, teach Applicants' claims is noted. However, Yokomizo specifically teaches that palm kernel meal is enzymatically degraded to generate oligosaccharide and thus, this obtained product is used for the purpose of improving the animal feed and is effective for inhibiting/eliminating Salmonella from livestock, note col. 2 lines 28 and 20-50. The reaction system of a mannan degrading enzyme and a mannan-containing natural material, such as palm kernel meal, to generate a mannooligosaccharide such as beta-1,4-mannobiose-containing composition, and then blending with a feed is anticipated by the teachings of the reference.

The argument that comparative examples of 1 and 2 depicted at page 7, show an inverse correlation between the amount of beta-1,4-mannobiose and amount of

mannose produced and Yokomizo teaches mannose produced in large amounts is noted, however, the amount of mannose produced is temperature and reaction time dependent and the claims are not so limited to temperature condition, reaction time and so on.

Hence, for Applicants to rely upon the table of the specification is not persuasive for overcoming the reference. Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., temperature and time period, etc.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In addition, mannose can be present in 1% by weight, note col. 4, lines 66-67, which would correlate according to applicants to higher amounts of beta-1,4-mannobiose. The rejection is sustained for these reasons and those record.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

All claims fail to be patentably distinguishable over the state of the art discussed above. Therefore, the claims are properly rejected.

The remaining reference cited on the enclosed PTO-1449 Form

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE K. WARE whose telephone number is (571)272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DKW/  
Deborah K. Ware  
Examiner  
Art Unit 1651  
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